

information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

Question 38. The Commission requests comments on how to redesign the download templates in Appeal primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by Transmission Providers in making their own wholesale transmission purchasing decisions?

Question 44. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities' that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly owned utility) have a RIN?

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining

whether and when to relax the RINs requirements?

[FR Doc. 95-30884 Filed 12-20-95; 8:45 am]

BILLING CODE 6717-01-P

RAILROAD RETIREMENT BOARD

20 CFR Part 261

RIN 3220-AB15

Finality of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751-4929, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The proposed regulation addresses the finality of benefit decisions. This proposed rule is similar to the regulation of the Social Security Administration (SSA) entitled "Reopening and Revising Determinations and Decisions" (20 CFR 404.987-404.996).

Proposed § 261.1 describes who may open a final decision issued by the agency. Proposed § 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision; within 3 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in proposed § 261.2(c).

Proposed § 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Proposed § 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Proposed § 261.5 provides that a decision may be reopened after the 1 year and 3 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Proposed §§ 261.6-261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR part 260).

Proposed § 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Proposed § 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, proposed § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Labor Member of the Board dissented from the action of the majority of the Board approving this proposed rule. The Labor Member's reasons for dissenting from this action are set out below.

Views of the Labor Member of the Board

Proposed § 261.2 would allow unlimited retroactivity for reopening where an overpayment resulted from the Board's failure to apply a proper reduction to the tier I component of an annuity. This same section would allow unlimited retroactivity in cases where an incorrect decision results in entitlement to an annuity where if the decision were correct there would be no entitlement.

The Labor Member contends that failure to consider these cases final after a reasonable period of time clearly defeats the purpose of developing an administrative finality policy. He agrees that, where an individual through fraudulent or similar means causes an incorrect benefit to be paid, the Board should promptly take steps to correct the payment and collect the overpayment. However, in cases where an overpayment has been made due to an error on the part of the Board or the beneficiary and there was no intent at deception, he feels that a reasonable "statute of limitations" should be set. He feels a more reasonable approach would be to borrow a policy from the Social Security Administration and allow unlimited retroactivity for reopening decision that were unfavorable to a party, but only to correct clerical error or error that appears on the face of the evidence that was considered when the determination or decision was originally made. In most other cases, reopening should be limited.

The Labor Member points out that in November 1985 the Board published a proposed rule in the Federal Register dealing with administrative finality (50 FR 48602, November 26, 1985). Several months later, the Office of Management and Budget submitted a letter to the then Chairman of the Board expressing dissatisfaction with the proposed rule comparing it unfavorably with SSA's.

The Labor Member interprets this as a clear message that the Board should tailor its administrative finality policy to that of SSA's to the extent possible.

The Labor Member wants our beneficiaries to have the security of knowing that benefits that they have come to rely on will not be suddenly taken away and argues that conforming our administrative finality regulations to those of SSA's where appropriate, lends itself to a true administrative finality, while still maintaining the integrity of the railroad retirement system. He thinks the proposed rule approved by the majority of the Board fails to do this, and for this reason he cannot endorse it.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 261

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to amended as follows:

1. Part 261, Administrative Finality, is added to read as follows:

PART 261—ADMINISTRATIVE FINALITY

Sec.

- 261.1 Reopening and revising decisions.
- 261.2 Conditions for reopening.
- 261.3 Change of legal interpretation or administrative ruling.
- 261.4 Decisions which shall not be reopened.
- 261.5 Late completion of timely investigation.
- 261.6 Notice of revised decision.
- 261.7 Effect of revised decision.
- 261.8 Time and place to request review of a revised decision.
- 261.9 Finality of findings when later claim is filed on same earnings record.
- 261.10 Increase in future benefits where time period for reopening has expired.
- 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

Authority: 45 U.S.C. 231f.

§ 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) Reopening a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be

expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date or the notice of such decision, for any reason;

(b) Within three years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of

a deceased person, and it is later established that:

(i) the claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(8) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(9) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity;

(10) Except as is provided in § 261.4 of this part, the decision is incorrect for any reason and results in entitlement to an annuity in a case where if the decision were correct there would be no entitlement.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 261.4 Decisions which shall not be reopened.

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the

applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than \$25.00.

§ 261.5 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in § 261.2(a) or § 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 261.6 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 261.7 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 261.8 Time and place to request review of a revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

§ 261.9 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

§ 261.10 Increase in future benefits where time period for reopening has expired.

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: December 14, 1995.

By authority of the Board.

For the Board

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95-31059 Filed 12-20-95; 8:45 am]

BILLING CODE 7905-01-M